

OGC HAS REVIEWED.

11 May 1955

MEMORANDUM FOR: Chief, Personnel Security Division/OS

SUBJECT :  - Part-time Employment

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1. This is in response to your memorandum of 22 April 1955, which we return herewith, by which you request our opinion on a dual compensation question. According to the memorandum of the employee concerned , forwarded with your request to this Office, and information furnished us orally,  is a staff employee with the  engaged in translating documents in Russian; his salary exceeds \$2,500 per annum. The Voice of America has offered him a job as a free lance reporter in which he is to report United States sports news in French. The job will consist of writing and registering on records news to be broadcast in France. The work "would be done outside of my official working hours and would not interfere with my Agency assignment in any way".

2. The pertinent statutory provisions are in the following portions of Title 5, Sections 58, 62 and 70 of the U.S.Code:

"§ 58. Double salaries. Unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum."

"§ 62. Holding other lucrative office. No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially authorized thereto by law; . . ."

"§ 70. Extra allowances. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

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3. The Comptroller General, in a case involving the engaging of a physician on a fee basis during the time he was employed on an annual salary basis by another agency, held that the "engaging of the services of a physician as a consultant by contract or otherwise on a fee basis, for services actually performed is not an appointment to an 'office to which compensation is attached', within the meaning of" Section 62 (22 Comp. Gen. 312). In the same decision it was ruled that "payments by the Veterans' Administration of fees to a doctor during the time he was employed as a medical advisor on an annual salary basis by another Government agency" would not contravene Section 58 "because fees do not constitute 'salary' within the meaning of said statute". And finally this same ruling, which was relied on and followed in a later decision (28 Comp. Gen. 459), restates the holdings of a number of court decisions to the effect that Section 70 "does not prohibit a person from holding, and receiving the compensation of, two separate and distinct offices, positions, or employments, the salary or compensation of each of which is fixed by law or regulation, where the two services are not incompatible with each other".

4. We see no pertinent distinction to be drawn between the case of physicians and that of [redacted] Further, since [redacted] CIU compensation is "fixed by law or regulation" [redacted] the Classification Act of 1949), his case would fall within the bounds prescribed by the Comptroller General, if the compensation of the Voice of America assignment is also fixed by law or regulation. We have not thought it feasible for this Office to attempt to determine this fact. [redacted] also may have some difficulty, because of security factors, in getting this information from the Voice of America. However, by indicating a seasoned skepticism of the workings of bureaucracy he should be able to insist on being shown the authority under which he is being hired. Upon receipt of such information, this Office will be glad to advise concerning it and its effect on the offer to [redacted]

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Office of General Counsel

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